

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services proposes to amend Chapter 50, "Definitions," Chapter 63, "Leave," and Chapter 64, "Benefits," Iowa Administrative Code.

These amendments reflect the removal of definitions no longer needed in the rules, conformity of the rules to the Family and Medical Leave Act, the addition of new family leave provisions for family members of certain military personnel as required by the National Defense Authorization Act for FY 2008, deletion of outdated information regarding employee benefits, and clarification of reimbursement for educational expenses.

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Jennifer Sandusky, Human Resources Enterprise, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-5102 or by E-mail to jennifer.sandusky@iowa.gov.

These amendments are intended to implement the Family and Medical Leave Act, the National Defense Authorization Act for FY 2008, and Iowa Code chapters 70A and 509A.

The following amendments are proposed.

ITEM 1. Rescind the definitions of "Double spouse," "Health care provider" and "Serious health condition" in rule **11—50.1(8A)**.

ITEM 2. Amend rule **11—50.1(8A)**, definitions of "In loco parentis" and "Uniformed services," as follows:

"In loco parentis" means in the place of a ~~son, daughter or~~ parent and charged with the same rights, duties, and responsibilities as a ~~son, daughter or~~ parent.

"Uniformed services" means ~~the United States armed forces and organized reserves (army, navy, air force or marines), the army national guard and the air national guard when engaged in active duty for training, inactive duty training, or full time national guard duty, organized reserve duty, the commissioned corps of the public health service, coast guard, and any other category of persons designated by the President in time of war or emergency service as defined in 29 CFR Part 1002.~~

ITEM 3. Amend **11—Chapter 50**, implementation sentence, as follows:

This rule is intended to implement ~~2003 Iowa Code Supplement~~ sections 8A.401 to 8A.439.

ITEM 4. Amend subrule 63.3(10) as follows:

63.3(10) All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23 ~~as amended by 2006 Iowa Acts, Senate File 2231,~~ or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee ~~who was is~~ separated due to ~~qualification for long-term disability benefits or~~ an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa

Code section 70A.23 as amended by 2006 Iowa Acts, Senate File 2231, and the provisions of 11 IAC 64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

ITEM 5. Amend rule 11—63.4(8A) as follows:

11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for ~~at least~~ a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the ~~previous~~ 12-month period immediately preceding the date leave is to begin shall be eligible for ~~12 weeks of family and medical leave per fiscal year~~ in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. ~~No more than 12 weeks (480 hours) of family and medical leave shall be granted to an employee in any fiscal year.~~ When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous six months. Leave may be for one or more of the following reasons:

a. The birth, ~~adoption or foster~~ or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;

b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee ~~incapable of performing~~ unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

e. A qualifying exigency, as defined in the National Defense Authorization Act for FY 2008 (NDAA), arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation.

f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the NDAA.

63.4(2) Leave may be taken on an intermittent ~~leave~~ basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," ~~"e" or "d"~~ "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

63.4(3) Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," ~~"b" or "e"~~ "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider

releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

~~An employee who requests FMLA leave after the birth, adoption or foster placement of a son or daughter must take the leave within 12 months after the event.~~

When family FMLA leave is taken pursuant to paragraph “d” of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted. ~~An employee may, but is not required to, use accrued compensatory leave for FMLA leave if the employee follows standard request procedures for the leave. Compensatory leave used in this fashion will not reduce the employee’s FMLA leave entitlement.~~

63.4(4) An employee shall submit a written request, ~~of using~~ forms developed prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice ~~within two workdays, or~~ as soon as practicable, after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline ~~to~~ of the employee.

The appointing authority shall ~~grant, tentatively grant, delay, or deny leave as FMLA leave within two workdays following notice of the leave or when the appointing authority has a reasonable basis to conclude an absence qualifies as FMLA leave~~ provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms ~~developed prescribed~~ by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within ~~two~~ five workdays.

63.4(5) ~~When the leave involves the employee’s serious health condition, the~~ The appointing authority may, at the agency’s expense, require a second opinion. ~~However, the health care provider chosen by the appointing authority for the second opinion cannot be~~ The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency’s expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state’s share of the employee’s health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee’s share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to ~~no more than~~ the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) to 63.4(9) No change.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority’s obligations may be governed by the Americans with Disabilities Act. ~~The appointing authority shall make reasonable accommodations for a qualified employee with a disability when such accommodations will allow the employee to perform essential job functions unless they pose an undue hardship.~~

63.4(11) to 63.4(13) No change.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered

employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, ~~on~~ using forms prescribed by the department, to retain ~~up to two weeks (80 hours) of vacation at the onset of the FMLA qualifying event or at any time during the original eligibility period~~ by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.

ITEM 6. Amend rule 11—63.6(8A) as follows:

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, disaster service volunteer leave, or educational leave ~~or leave without pay for military service~~ must notify the ~~agency or institution~~ appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. ~~The appointing authority must approve if an~~ An employee on leave without pay, disaster service volunteer leave, or educational leave ~~requests~~ may request permission from the appointing authority to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, ~~or educational leave required by the appointing authority,~~ shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to ~~a vacant position in the class held prior to separation or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply~~ employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

63.6(3) At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

ITEM 7. Amend rule 11—63.9(8A) as follows:

11—63.9(8A) Military leave.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Such leave shall include a reasonable amount of time for commuting, for the period of active or inactive state or federal military service without loss of pay, benefits, seniority, or position during the first 30 days of leave. Thereafter, absences Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, ~~and~~ 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in ~~any each~~ each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ~~inducted into~~ ordered by proper authority to military

~~service duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll. The maximum period of accumulated time an employee can be on leave without pay or be separated from employment and still have return rights is five years.~~

~~— a. The following periods shall be excluded from accumulation to determine return rights of an employee:~~

~~— (1) Periods in which the employee is required, beyond five years, to complete an initial period of obligated service.~~

~~— (2) Periods during which a person is unable to get orders releasing the person from a period of service in the uniformed services before the expiration of such five year period and such inability was through no fault of the person.~~

~~— (3) Periods ordered to be performed under 10 U.S.C. Sections 270, 672(a), 672(g), 673, 673(e), and 688; 14 U.S.C. Sections 331, 332, 359, 360, 367, and 712; and 32 U.S.C. Sections 502(a) and 503.~~

~~— (4) Periods ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or Congress.~~

~~— (5) Periods ordered to or retained on active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under the authority of 10 U.S.C. Section 673(b).~~

~~— (6) Periods ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services or called into federal service as a member of the National Guard under 10 U.S.C. Chapter 15 or under Sections 3500 or 8500.~~

~~— b. The employer is not required to reemploy an individual if the individual's employment prior to military service was for a brief, nonrecurring period and there was no reasonable expectation that it would continue indefinitely; if reemployment would cause an undue hardship on the employer; if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or if the employee has not received an honorable discharge for the employee's period of service in the uniformed services. It is the responsibility of the employer to document such "undue hardship" as well as circumstances that have changed such that reemployment is impossible or unreasonable. When requested, this documentation shall be provided to the former employee.~~

63.9(3) ~~Nontemporary employees who elect to separate from employment for induction into military service when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.~~

~~Employees who elect to be placed on leave without pay when inducted into military service ordered by proper authority to military duty shall continue to receive regular pay and benefits for the first 30 days of leave. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.~~

63.9(4) ~~The At the conclusion of military service, the employee must notify the agency from which separated or placed on leave without pay employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344. If the service is less than 31 days (or for the purpose of taking an examination to determine fitness for service) the employee must report to the employer for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence. If reporting within that period is impossible or unreasonable through no fault of the employee, the employee shall report to work as soon as possible.~~

~~If the period of service was for 31 days or more but less than 181 days, the employee must submit an application to the employer no later than 14 calendar days following completion of service (if submitting an application is impossible or unreasonable through no fault of the employee, then the next calendar day when submission of the application is possible). For service over 180 days, the employee must submit an application with the employer no later than 90 days after completion of the service.~~

~~These time period restrictions shall be extended by up to two years if an employee is hospitalized or convalescing from an injury caused by active duty. The two year period will be extended by the~~

~~minimum time required to accommodate the circumstances beyond the individual's control which makes reporting within the time limits impossible or unreasonable.~~

~~63.9(5) The employer may request that an employee provide the employer with documentation that establishes the timeliness of the application for reemployment and the length and character of uniformed service. If documentation is unavailable, the employer must reemploy the employee until the documentation becomes available. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements for reemployment, the employer may terminate the employment of the person. An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.~~

~~63.9(6) An employee with fewer than 91 days of uniformed service must be reemployed promptly in a position that the employee would have attained if continuously employed, unless proved not qualified after reasonable efforts are made by the employer to qualify the employee. If not qualified for that position, the person will be reemployed in the position the person left. These requirements are the same for service of 91 days or more, with the additional option that a position of like seniority, status and pay may be offered. If unqualified after reasonable efforts by the employer to qualify the employee for such a position or the position that was left prior to service, the employee must be reemployed in any other position of lesser status and pay for which the employee is qualified, with full seniority. The position for which the employee is entitled is further governed by rule 11—63.6(8A).~~

~~An employee with a service-connected disability who is not qualified for employment in the position the employee would have attained but for military service, or in the position that was left (even after reasonable efforts by the employer to accommodate the disability) must be reemployed promptly in any other position of similar seniority, status, and pay for which qualified or would become qualified with reasonable efforts by the employer. If these efforts fail, reemployment must be in a position which is the nearest approximation consistent with the circumstances of the employee's case.~~

~~If two or more employees are entitled to reemployment in the same position or classification, the individual who left first for service in the uniformed services has the higher right to be reemployed first. An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.~~

~~63.9(7) Upon reemployment, a person is entitled to the seniority and other benefits the individual would have attained, with reasonable certainty, had that person remained continuously employed. The employee may be required to pay the employee cost, if any, of any benefit to the extent that other employees are required to pay.~~

~~63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.~~

~~63.9(8) Any person taking military leave may use any vacation that is accrued prior to service. Upon reemployment, the employee's accrual rate for vacation shall be the same rate as if the employee had not taken military leave.~~

~~63.9(9) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental~~

~~insurance premiums if the period of military service is less than 31 days. If beyond 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon reemployment, health and dental insurance coverage will become effective either on the first day of the month following the month the employee was reemployed or the first day of the month in which the employee was reemployed. Coverage under the plans will not have an exclusion or waiting period upon reemployment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.~~

~~— **63.9(10)** A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.~~

~~— *a. Retirement system.* No forfeiture of benefits already accrued will be permitted, and there will be no necessity to requalify for participation in a retirement system by reason of absence for military service. To the extent required by law, employers will be required to make, on behalf of returning service members, any contributions to the members' pensions that the employer would have made if the service member had not been absent for military service. Employees will have up to three times the period of service to make up missed contributions (not to exceed five years). The employer is required to make matching contributions only to the extent that the reemployed service member makes the required employee contributions. No interest or penalty will be charged on the employee or employer contribution, nor will the employee be credited with interest that would have been earned on such contributions.~~

~~— *b. FMLA eligibility.* In determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the state shall be combined with the months and hours that would have been worked but for the military service during the 12 months prior to the start of the leave requested.~~

ITEM 8. Rescind subrule **63.10(4)**.

ITEM 9. Renumber subrule **63.10(5)** as **63.10(4)**.

ITEM 10. Adopt the following new rule 11—63.20(8A,70A):

11—63.20(8A,70A) Bone marrow and organ donation leave. Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

ITEM 11. Amend **11—Chapter 63**, implementation sentence, as follows:

These rules are intended to implement 2003 Iowa Code ~~Supplement~~ section 8A.413 and Iowa Code chapter 70A.

ITEM 12. Amend rule 11—64.1(8A) as follows:

11—64.1(8A) Health benefits. The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

~~— **64.1(1)** The executive council of Iowa shall determine the amount of the state's contribution toward~~

~~each individual non-contract covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.~~

~~— 64.1(2) Health maintenance organizations (HMOs). Beginning with the benefit year starting January 1, 2001, any HMO seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). When an HMO seeks approval to offer benefits to state employees but has not achieved the required accreditation, the director may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO that outlines its intent to achieve accreditation. If the HMO has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council and may recommend termination of the contract.~~

~~— 64.1(3) Definitions. The following definitions shall apply when used in this rule:~~

~~“Employee” means any employee of the state of Iowa covered by Iowa Code chapter 509A.~~

~~“HMO” means any health maintenance organization as defined in Iowa Code section 514B.1(6).~~

ITEM 13. Amend rule 11—64.2(8A) as follows:

11—64.2(8A) Dental insurance. The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.

ITEM 14. Amend rule 11—64.3(8A) as follows:

11—64.3(8A) Life insurance. The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

ITEM 15. Amend rule 11—64.4(8A) as follows:

11—64.4(8A) Long-term disability insurance. The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

ITEM 16. Amend subrule **64.6(1)**, definition of “Retirement investors' club,” as follows:

“*Retirement investors' club*” means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains ~~two~~ three plans, the 457 employee contributions plan, ~~and the 401(a) employer contribution plan, and the 403(b) tax-sheltered annuity plan.~~

ITEM 17. Amend paragraphs **64.6(2)“g”** to “**k**” as follows:

g. *Plan expenses.* Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term

interest that has accrued in the deferred compensation trust fund created by Iowa Code section ~~19A.12C~~ 8A.434 prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

~~h. *Advisory committee.* There shall be appointed by the plan trustee an advisory committee. The advisory committee shall consist of representatives of the legislative, judicial, and executive branches of government, public sector employees through their authorized collective bargaining representatives, and the private sector. Such representatives shall convene in regularly scheduled meetings, in a manner, time and place chosen by the plan trustee or designee, to advise in the administration of the plan and the plan investment options.~~

~~i. *h.*~~ *Time periods.* As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

~~j. *i.*~~ *Supplementary information and procedures.* Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

~~k. *j.*~~ *Binding plan.* The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

ITEM 18. Amend paragraphs **64.6(9)“e”** to **“g”** as follows:

~~e. *Quality standards.* An investment provider that issues individual or group annuity contracts, or that has issued life insurance policies, must have:~~

~~—(1) A minimum credit rating of at least “A-” from the A.M. Best Company financial strength rating system or equivalent ratings from two other major, recognized ratings services, and~~

~~—(2) A minimum number of years in existence greater than 12.~~

In lieu of (1) and (2) above, an investment provider that provides mutual funds shall be selected by the plan administrator using a selection process that includes quality standard requirements as set forth in a competitive bid process and in the investment provider's service agreement or contract.

~~f. *e.*~~ *Minimum contract requirements.* In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

~~g. *f.*~~ *Removal from participation.* Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

ITEM 19. Amend subrule 64.8(2) as follows:

64.8(2) Enrollment. An ~~open~~ enrollment ~~and change~~ period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless a ~~change~~ an election form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

ITEM 20. Amend subrule 64.10(4) as follows:

64.10(4) Repayment. As a condition of ~~receiving~~ applying for reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority ~~for a period following the date of receipt of reimbursement that is.~~ The agreement must be signed prior to approval and will stipulate the period of time deemed by the appointing authority to be commensurate with the amount of reimbursement received. The period of time commences upon successful completion of the course. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

ITEM 21. Amend **11—Chapter 64**, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Code Supplement~~ sections 8A.402, 8A.433 to 8A.438, and 8A.454 and Iowa Code chapter 509A.